

EXHIBIT A

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4

5 UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF MASSACHUSETTS
7 WORCESTER DIVISION

8 - - - - - x

9 DONALD P. SPEAKMAN, STEPHEN H. WEDEL and
10 MARK L. ROBARE, Individually and On Behalf
11 of All Others Similarly Situated12 Plaintiffs Civil Action
13 v. NO. 4:04-cv-40077-FDS

14

15 ALLMERICA FINANCIAL LIFE INS. &
16 ANNUITY CO., FIRST ALLMERICA FINANCIAL
17 LIFE INS. CO., and ALLMERICA FINANCIAL CORP.

18 Defendants

19 - - - - - x

20 DEPOSITION of DONALD P. SPEAKMAN

21 Wednesday, November 2, 2005

22 11:33 a.m.

23

24 Michelle Keegan, Court Reporter

Donald P. Speakman

11/02/2005

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2			
3	HUBBARD & BIEDERMAN, LLP		
4	By Stephen L. Hubbard, Esq.		
5	1717 Main Street		
6	Dallas, Texas 75201		
7	(214) 857-6000		
8	Counsel for the Plaintiffs		
9			
10	WILMER CUTLER PICKERING HALE AND DORR, LLP		
11	By Jonathan A. Shapiro, Esq. and		
12	Brett R. Budzinski, Esq. and		
13	Jared C. Miller, Esq.		
14	60 State Street		
15	Boston, Massachusetts 02109		
16	(617) 526-6344		
17	Counsel for the Defendants		
18			
19	Also Present:		
20	Mark H. Stepakoff, Allmerica Financial		
21			
22			
23			
24			

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3	DONALD P. SPEAKMAN	Direct	
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		Page 266	Page 268
1	Q. Other than Mr. Wirtz and Mr. Hubbard and	1	A. No.
2	Mr. Biederman, do you have any other lawyers	2	Q. What were your prior interactions with NASD?
3	presently?	3	A. I had one case from 1990, I think it was,
4	A. Yes.	4	that ended up being a subject of discussion with the
5	Q. The name of those other lawyers?	5	NASD.
6	THE WITNESS: Is he talking about Rod?	6	Q. Did you provide testimony with respect to
7	Q. I'm just asking their names, sir. I'm not	7	that one case?
8	asking about anyone in particular.	8	A. I'm sure I did. I mean, it was 1990. But
9	A. I have another attorney. I can't remember	9	yes.
10	his last name. It's been a long day.	10	Q. Who was your lawyer during that matter?
11	Q. I know. Can you remember his first name?	11	A. Jim something or other -- Chores, who now
12	A. Rod.	12	works for the NASD.
13	Q. Other than Rod last name unknown, do you	13	Q. With Allmerica, correct?
14	have any other attorneys?	14	A. Yeah.
15	A. No.	15	Q. So Allmerica knew about that one?
16	Q. For what purpose did you retain Rod?	16	A. Yeah.
17	A. For an issue with the NASD.	17	Q. Did you notify Allmerica when you learned of
18	Q. What is the issue with the NASD?	18	the current NASD audit?
19	A. We had an audit and I retained Rod.	19	A. No, I did not personally notify Allmerica.
20	Q. Who is the "we"?	20	Q. To your knowledge, did anyone notify
21	A. My firm.	21	Allmerica on your behalf?
22	Q. Speakman Financial Group?	22	A. I have no idea.
23	A. Uh-hmm. And Main Street.	23	Q. Did you ask anyone to?
24	Q. Does Rod also represent Main Street?	24	A. No, I did not personally ask anyone to.
		Page 267	Page 269
1	A. I believe he does.	1	Q. To your knowledge, what is the -- who --
2	Q. When was the audit?	2	Strike that.
3	A. Approximately about a year ago.	3	To your knowledge, who is under scrutiny
4	Q. How did you first learn about the audit?	4	by the NASD?
5	A. I'm sure we got some sort of notification.	5	MR. HUBBARD: I object to the form of
6	Again, my brother Dave would have worked with the	6	the question. If anyone.
7	Meckenstock organization, my broker/dealer. So Dave	7	A. I don't understand the question.
8	probably told me. I don't remember specifically.	8	Q. What's your understanding of the NASD
9	Q. Was this the first time that you or your	9	inquiry that you're presently involved in?
10	organization has been audited by the NASD?	10	MR. HUBBARD: I object to the form of
11	A. Yes.	11	the question.
12	Q. Putting aside the NASD issue, have you ever	12	A. My understanding is they wanted confirmation
13	had -- Strike that.	13	that the exchanges that we were doing were in our
14	Have you ever been the subject of an	14	clients' best interests.
15	inquiry from the SEC?	15	Q. Is that NASD inquiry still pending?
16	A. No.	16	A. I'm not clear on that.
17	Q. How about any state insurance regulator?	17	Q. Has anyone notified you that it has been
18	A. No.	18	closed? And just answer yes or no.
19	Q. How about any state securities regulator?	19	MR. HUBBARD: If you would have to
20	A. Not that I'm aware of.	20	reveal attorney-client confidences, I'd tell you not
21	Q. How about any other state or federal agency?	21	to do that until you consult with your attorney
22	A. Not that I'm aware of.	22	that's representing you there.
23	Q. Is this, sir, your first interaction with	23	A. I'm not going to answer that.
24	NASD?	24	Q. Let me establish a record. Sir, did you

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<p style="text-align: right;">Page 270</p> <p>1 understand the question I asked? 2 A. Yes. 3 Q. Do you know the answer to the question? 4 A. I believe I do. 5 Q. Without revealing anything you've said to 6 Rod last name unknown or that Rod said to you, do 7 you know the status of the NASD inquiry? Yes or no. 8 A. Yes. 9 Q. Is the NASD inquiry of you still active? 10 A. I'm not answering that question. 11 Q. Okay. 12 MR. HUBBARD: If this will shorten 13 things -- 14 MR. SHAPIRO: It won't shorten things. 15 I want to keep asking questions. Thank you, Steve. 16 MR. HUBBARD: Mr. Speakman, if he's 17 asking you to divulge attorney-client privileged 18 information, you shouldn't -- I advise you not to do 19 that. 20 MR. SHAPIRO: He already just refused to 21 answer, so you're a little late. 22 MR. HUBBARD: I'm not a little late. 23 Q. Do you know if anybody else is the subject 24 of the NASD inquiry?</p>	<p style="text-align: right;">Page 272</p> <p>1 is privileged? 2 MR. HUBBARD: If he's been given that 3 information by his attorney, yes, of course it is. 4 MR. SHAPIRO: Sir, facts aren't 5 privileged. Communications are. 6 MR. HUBBARD: Wait a second. I don't 7 know -- I'm not going to let this witness testify to 8 attorney-client communication. If he has received 9 information from the NASD, he can testify to that. 10 Q. Sir, with which attorney did you have these 11 communications? 12 A. Rod. 13 Q. Are the others -- Strike that. 14 With whom have you discussed with in any 15 way, shape or form the NASD inquiry other than 16 Mr. Hubbard, Mr. Biederman or Mr. Rod? 17 A. Well, we have kind of an offshoot of the 18 Allmerica study group, all the people in the class 19 that are involved in this litigation, and we've had 20 phone conferences where we've discussed the NASD. 21 Q. Have lawyers been on each of those phone 22 conferences? 23 A. I don't know. 24 Q. When was the last time you discussed the</p>
<p style="text-align: right;">Page 271</p> <p>1 A. Yes. 2 Q. Who else? 3 A. Allmerica gave the NASD a list of all their 4 advisors. And I think -- My understanding is they 5 encouraged the NASD to investigate everybody. 6 Q. Do you know that the NASD has investigated 7 anyone other than yourself and Main Street? 8 A. Yes. 9 Q. Who else has the NASD investigated? 10 MR. HUBBARD: Well, Mr. Speakman, if 11 it's information that has been given to you by your 12 attorney, that's attorney-client privilege. 13 THE WITNESS: It is. 14 MR. HUBBARD: Then you shouldn't be 15 testifying to any of this. If it's information you 16 received from your attorney, that's privileged. And 17 he shouldn't even be asking you the questions. 18 A. I'm not going to answer any questions about 19 the NASD investigation. 20 Q. Hold on. We need to take them one at a 21 time. 22 MR. SHAPIRO: Just so we're clear for 23 the record, Mr. Hubbard, is it your position that 24 the name of someone who's the subject of an inquiry</p>	<p style="text-align: right;">Page 273</p> <p>1 NASD inquiry with your study group? 2 A. Six months ago, perhaps. 3 Q. Who was on the call? 4 A. I don't recall. There was 30 people on the 5 call. 6 Q. Who raised the topic? 7 A. I don't recall. 8 Q. Well, have you told anybody that you're the 9 subject of an NASD investigation? 10 A. Yes. 11 Q. Who have you told? 12 A. Other advisors. 13 Q. How about their names, sir? 14 A. It would be very similar to the list of 15 names I gave you the first time. 16 Q. Do you remember having a conversation with 17 anyone in particular about it? 18 A. I've talked to a lot of advisors about my 19 situation with the NASD. 20 Q. Why did you talk to the other advisors about 21 your situation with the -- 22 A. So we could learn from each other. If we're 23 going through similar challenges, then we can 24 learn -- we can share ideas with each other.</p>

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1 Q. To your knowledge, are any other members of
 2 the study group going through similar challenges?
 3 A. Which study group are you referring to now?
 4 Q. The one that you previously just referred to
 5 as being among those with whom you've raised your
 6 NASD situation.
 7 A. I believe there are other Allmerica advisors
 8 that are being -- have had various levels of inquiry
 9 from the NASD. That's my understanding. I don't
 10 know any factual information.
 11 Q. Fair enough, sir. Did any of them tell you
 12 that fact?
 13 A. I believe -- I honestly -- This is not
 14 attorney-client.
 15 Q. Sure, sure.
 16 A. I don't remember. But I know -- I have the
 17 impression that the way other people were talking,
 18 that I'm not the only one who's had an issue with
 19 the NASD who worked for Allmerica.
 20 Q. Did you testify before the NASD?
 21 A. Yes.
 22 Q. How many days, sir?
 23 A. Two days.
 24 Q. Did you tell any of your clients that you

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1 Q. Fair enough. And I'm not suggesting
 2 otherwise. I'm just asking if it was on the U4.
 3 To your knowledge, have any other former
 4 Allmerica agents testified before the NASD?
 5 A. I'm not sure.
 6 Q. Have you told any of the other Allmerica
 7 agents that you testified before the NASD?
 8 A. Yes.
 9 Q. Did you tell any of them the questions that
 10 you were asked?
 11 MR. HUBBARD: I object to the form of
 12 the question.
 13 A. No. What I shared -- No.
 14 Q. Well, what did you share with them about
 15 your NASD testimony?
 16 A. Well, there was various documents showing
 17 various studies that were done that displayed the
 18 benefit of annuitization, of how annuity contracts
 19 work, asset allocation, and I provided numerous
 20 studies like that to the NASD.
 21 At one point I offered them to people in
 22 the study group, that if anybody thought they might
 23 be going through similar things and they wanted some
 24 of these studies, that I would be glad to provide

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1 have, to use your term, an NASD situation?
 2 A. Tell any clients. I'm not comfortable
 3 saying no because I have some clients that I'm
 4 fairly close with that I certainly could have -- I
 5 asked different people to say prayers for me the day
 6 of my hearing. I certainly could have asked some
 7 clients to pray during my hearing so that I would
 8 stay nice and calm.
 9 Q. Other than asking clients to pray for you
 10 with respect to the NASD testimony, can you think of
 11 any other discussions you've had with clients about
 12 the matter?
 13 A. No, not off the top of my head.
 14 Q. Did you disclose it on your U4?
 15 A. Whatever has to be done on my U4 I feel
 16 extremely confident has been done, if anything has
 17 been required.
 18 Q. Fair enough, sir. I'm not suggesting either
 19 way. That's something you've delegated to someone
 20 else, yes?
 21 A. Yes. I don't believe that the inquiry that
 22 I had with the NASD, because there was no
 23 accusations made, that anything even belongs on a
 24 U4.

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1 them the studies. And I also encouraged them to
 2 read the studies to make sure they were doing the
 3 right thing for their clients.
 4 Q. Did you discuss with any of the former
 5 Allmerica agents how your NASD testimony went?
 6 MR. HUBBARD: I object to the form of
 7 the question. Mr. Speakman, you have separate
 8 counsel for that proceeding. I'd feel very
 9 uncomfortable with you being examined on all that
 10 with your counsel not present.
 11 I've let some of these questions go, but
 12 at this point in time if you want to ask any
 13 additional questions concerning NASD proceedings,
 14 I'd request we do that with Mr. Rod Vincent present.
 15 Q. What's your schedule look like next week,
 16 Mr. Speakman?
 17 MR. HUBBARD: We will confer -- I'll
 18 confer with Mr. Speakman about that.
 19 Q. Do you have availability next week?
 20 MR. HUBBARD: We're not going to do it
 21 on the record. If you want to talk with me about
 22 it, we'll do it. That's it. We're not going to
 23 have a discussion on the record about schedules.
 24 MR. SHAPIRO: Just so the record is

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<p style="text-align: right;">Page 278</p> <p>1 clear, are you going to instruct the witness not to 2 answer any more questions about the NASD whatsoever? 3 MR. HUBBARD: I just did. I just -- I 4 didn't instruct him. I told you that I feel 5 uncomfortable with you going into detailed questions 6 about a proceeding that his counsel is not present. 7 I think it's inappropriate of you. I think you're 8 asking questions that are inappropriate. From your 9 position, you shouldn't be asking those questions.</p> <p>10 Q. Sir, do the matters at issue in the NASD 11 situation have anything to do with the replacement 12 of Allmerica annuities?</p> <p>13 A. Yes.</p> <p>14 MR. HUBBARD: I'll let you answer that 15 question. I'm going --</p> <p>16 Q. Were some of those annuities the subject of 17 the Trail Program upon which you've based your 18 federal court lawsuit?</p> <p>19 A. Correct.</p> <p>20 Q. Did you speak to Mr. Wedel about your NASD 21 testimony?</p> <p>22 MR. HUBBARD: All right. I've got -- 23 Both Mr. Speakman and I have to leave for the 24 airport.</p>	<p style="text-align: right;">Page 280</p> <p>1 MR. HUBBARD: He's asking you about the 2 counterclaim without showing you the counterclaim. 3 So if you can recall, say yes or no or I don't 4 recall.</p> <p>5 Q. Do you recall that any part of the 6 counterclaim that Allmerica has asserted against 7 you, sir, concerns allegations that you did not 8 comply with your regulatory requirements?</p> <p>9 A. I would like to see the actual document if 10 we're going to talk about it.</p> <p>11 Q. Fair enough. Without the document -- I 12 realize you don't have it in front of you. Do you 13 have any knowledge on that topic without the 14 document?</p> <p>15 A. I've read the document.</p> <p>16 Q. Sure. Do you have any memory?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What's your memory?</p> <p>19 MR. HUBBARD: You want him to 20 remember --</p> <p>21 A. Pertaining to what?</p> <p>22 Q. Has Allmerica asserted a claim against you 23 based in part on the allegation that you have not 24 complied with regulatory requirements?</p>
<p style="text-align: right;">Page 279</p> <p>1 If you want to ask other detailed 2 questions about the NASD inquiry, which are highly 3 inappropriate -- You're obviously trying to get this 4 witness to answer questions without the assistance 5 of his counsel in that proceeding. I think it's 6 totally inappropriate, Jon. I don't know what 7 you're trying to do here.</p> <p>8 If you want to continue this 9 questioning, we will provide or arrange a time when 10 his counsel can be present to represent him in 11 connection with that situation.</p> <p>12 Q. Mr. Speakman, has Allmerica asserted claims 13 against you in this lawsuit?</p> <p>14 A. They have a counterclaim. Is that what 15 you're referring to?</p> <p>16 Q. Sure. You're aware of that?</p> <p>17 A. Yeah. I read it.</p> <p>18 Q. Any part of that counterclaim, to your 19 knowledge, based on Allmerica's allegations that 20 you, Mr. Speakman, did not comply with regulatory 21 requirements?</p> <p>22 MR. HUBBARD: I object to the form of 23 the question.</p> <p>24 A. My regulatory record is perfect.</p>	<p style="text-align: right;">Page 281</p> <p>1 A. I believe that that's part of their 2 counterclaim.</p> <p>3 Q. Okay. Have you told any of your clients 4 about your lawsuit against Allmerica?</p> <p>5 A. Yes.</p> <p>6 Q. About how many clients have you told?</p> <p>7 A. I have no idea. I mean, at various seminars 8 that we've had people have raised the question, Are 9 you suing Allmerica? If they've asked me that, I've 10 said, Yes.</p> <p>11 Q. So the record is clear, the only time you've 12 spoken to clients about your lawsuit against 13 Allmerica is in response to a question from a 14 client?</p> <p>15 MR. HUBBARD: I object to the form of 16 the question.</p> <p>17 A. I didn't say that.</p> <p>18 Q. In fact, sir, did you put up on an overhead 19 slide a copy of the complaint that was filed against 20 Allmerica on your behalf?</p> <p>21 A. Yes.</p> <p>22 Q. Did you consider that important information 23 for your clients to know?</p> <p>24 A. Yes.</p>

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<p style="text-align: right;">Page 286</p> <p>1 Q. Do you ever tell the client if they don't 2 ask? 3 A. In most cases it's irrelevant. 4 Q. Do you ever tell the client if they don't 5 ask? 6 A. In most cases it's irrelevant. 7 Q. Sir, why don't we try it this way. It's a 8 yes or no question. Why don't you answer it yes or 9 no or I don't know, and then you can take as much 10 time as you'd like to explain your answer. Okay? 11 MR. HUBBARD: I object to the form of 12 the question. If you can answer it, do so. If not, 13 tell him you can't. 14 Q. Do you ever tell the client if they don't 15 ask what commissions you're earning from the sale of 16 a replacement annuity? 17 A. No. 18 Q. Fair to say, then, you certainly don't 19 provide that information in writing? 20 MR. HUBBARD: I object to the form of 21 the question. 22 A. No. 23 Q. No, you don't provide it in writing, 24 correct?</p>	<p style="text-align: right;">Page 288</p> <p>1 A. No. 2 MR. HUBBARD: Jonathan, if we want to 3 catch our planes, we have to leave now. 4 MR. SHAPIRO: Fair enough. Two more 5 questions. 6 Q. Are you under any obligation today to do 7 your level best to maintain persistency of Allmerica 8 annuities? 9 MR. HUBBARD: I object to the form of 10 the question. 11 A. Repeat the question. 12 Q. Are you under any obligation today, sir, to 13 maintain persistency of Allmerica annuities? 14 A. I'm under an obligation to my clients and do 15 what is best for my clients. 16 Q. How about any obligations to Allmerica? 17 A. None. 18 MR. HUBBARD: I object to the form of 19 the question. 20 Q. Have you ever been? 21 A. When Allmerica provided a viable product 22 with a viable rated company with a viable asset 23 allocation model, absolutely. 24 Q. At what point in time, sir, did your</p>
<p style="text-align: right;">Page 287</p> <p>1 A. Correct. 2 Q. Have you ever seen the movie "Wall Street," 3 sir? 4 A. Yes. 5 Q. Have you ever broached the topic of the 6 movie "Wall Street" in one of your client seminars? 7 A. Yes. 8 Q. What does the movie "Wall Street" have to do 9 with the financial services you provide to your 10 clients? 11 MR. HUBBARD: I object to the form of 12 the question. 13 A. The "Wall Street" movie has nothing to do 14 with the services I provide my clients. 15 Q. What does the movie "Wall Street" have to do 16 with the financial interests of your clients in any 17 way? 18 MR. HUBBARD: I object to the form of 19 the question. 20 A. Probably none. 21 Q. Did you broach the topic of the movie "Wall 22 Street" in client seminars in an effort to maintain 23 persistency of annuity contracts underwritten by 24 Allmerica?</p>	<p style="text-align: right;">Page 289</p> <p>1 obligation in that regard to Allmerica stop? 2 MR. HUBBARD: Objection to the form of 3 the question. 4 A. In my opinion, it changed dramatically 5 beginning in September of '02, whenever the ratings 6 dropped significantly and my clients started getting 7 very nervous. 8 MR. SHAPIRO: Okay. Well, I don't want 9 you to be late for your plane and I don't want you 10 to be late for your plane. 11 MR. HUBBARD: Okay. 12 MR. SHAPIRO: What we will do is if we 13 can have a conversation tomorrow by, say -- I know 14 you'll be back late tonight. 15 MR. HUBBARD: If I leave now I might be. 16 MR. SHAPIRO: -- 11:00 a.m. to talk 17 about the continuation of Mr. Speakman's 18 deposition -- 19 MR. HUBBARD: That's fine. 20 MR. SHAPIRO: -- to make sure we have an 21 opportunity to do so prior to our class 22 certification deadline and also to discuss some of 23 these outstanding document issues. 24 MR. HUBBARD: We'll have a conference</p>

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<p>1 call with you.</p> <p>2 MR. SHAPIRO: Super.</p> <p>3 BY MR. SHAPIRO:</p> <p>4 Q. And Mr. Speakman, if you can just do your 5 part in having a conversation with your attorney 6 about your availability because I know this lawsuit 7 is something of an inconvenience to you. Is that 8 fair enough?</p> <p>9 A. No comment.</p> <p>10 MR. HUBBARD: We'll have a conversation. 11 Thank you.</p> <p>12 (Whereupon the deposition 13 was adjourned at 5:53 p.m.)</p>	<p>Page 290</p> <p>1 COMMONWEALTH OF MASSACHUSETTS 2 SUFFOLK, SS. 3 4 I, Michelle Keegan, Registered Professional 5 Reporter and Notary Public in and for the 6 Commonwealth of Massachusetts, do hereby certify 7 that DONALD P. SPEAKMAN, the witness whose 8 deposition is hereinbefore set forth, was duly sworn 9 by me and that such deposition is a true record, to 10 the best of my ability, of the testimony given by 11 the witness. 12 I further certify that I am neither related to 13 or employed by any of the parties in or counsel to 14 this action, nor am I financially interested in the 15 outcome of this action. 16 In witness whereof, I have hereunto set my hand 17 and seal this 4th day of November, 2005.</p> <p>18 19 20 21 22 Notary Public 23 My commission expires: 24 May 12, 2012</p>
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<p>1 E R R A T A S H E E T</p> <p>2 I, DONALD P. SPEAKMAN, do hereby certify that I 3 have read the foregoing transcript of my testimony, 4 and further certify that said transcript is a true 5 and accurate record of my testimony (with the 6 exception of the following corrections listed 7 below):</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">8</td><td style="width: 20%;">Page</td><td style="width: 20%;">Line</td><td style="width: 50%;">Correction</td></tr> <tr> <td>9</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>10</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>11</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>12</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>13</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>14</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>15</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>16</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>17</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>18</td><td>-----</td><td>-----</td><td>-----</td></tr> <tr> <td>19</td><td>-----</td><td>-----</td><td>-----</td></tr> </table> <p>20 21 Signed under the pains and penalties of perjury 22 this day of , 2005.</p> <p>23 24 DONALD P. SPEAKMAN</p>	8	Page	Line	Correction	9	-----	-----	-----	10	-----	-----	-----	11	-----	-----	-----	12	-----	-----	-----	13	-----	-----	-----	14	-----	-----	-----	15	-----	-----	-----	16	-----	-----	-----	17	-----	-----	-----	18	-----	-----	-----	19	-----	-----	-----	<p>Page 291</p>
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